

Notice of Allowability

Application No.

09/544,751

Examiner

Hugh Jones

Applicant(s)

KIRSHENBAUM, EVAN R.

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5/31/2005.
2. ☒ The allowed claim(s) is/are 1-38.
3. ☒ The drawings filed on 29 August 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. Claims 1-38 of U. S. Application 09/544,751 filed 04/07/2000 are presented for examination.

Allowable Subject Matter

2. Claims 1-38 are allowed over the prior art of record.

3. The following is an examiner's statement of reasons for allowance:

a) the 101 rejections are withdrawn in view of Appellant's arguments on the top of page 11 of the Appeal Brief.

b) the 112 rejections are withdrawn in view of Appellant's arguments (pg. 13, Appeal Brief).

c) The art rejections are withdrawn for the following reasons:

4. The prior art of record does disclose (Terano et al., for example) the use of inductive learning and **genetic algorithms** with interactive and automated phases. The basic idea of the method is to integrate inductive learning to acquire **decision trees** or sets of decision rules and **genetic algorithms** to get the effective features to develop simple, easy-to-understand, and accurate knowledge from noisy data. The unique characteristic of the method is that the offspring (**decision trees**) are evaluated by both human-in-a-loop phase (simulated breeding) and automated simple GA-based phase. See particularly fig. 1 and associated text.

5. However, the rejections are withdrawn for the following reasons. Appellants map the independent claims to the specification in the "Summary of the Invention".

- Claim 1: (see pages 3-4, Appeal Brief). The prior art of record does not disclose or suggest the features of the claimed limitations as defined in the specification and as argued by Appellants in the Appeal Brief. For example, the prior art of record does not disclose the modeler # 16 in figure 1, in the context of the rest of the features disclosed in figure 1. Appellants are thanked for pointing out the detailed support for the claimed limitations.
- Claim 21: (page 4, Appeal Brief). The claim recites 'means for' language for selecting, thus mean for using a model, means for evolving a model, mean for generating, and means for evaluating. The prior art of record does not disclose or suggest the features of the claimed limitations as defined in the specification, as invoked by the means for language, and as argued by Appellants in the Appeal Brief. For example, the prior art of record does not disclose the modeler # 16 in figure 1, in the context of the rest of the features disclosed in figure 1. Appellants are thanked for pointing out the detailed support for the claimed limitations.
- Claim 26 (pages 4-5, Appeal Brief). The claim recites 'means for' language for storing, means for constructing, and means for evaluating. The prior art of record does not disclose or suggest the features of the claimed limitations as defined in the specification, as invoked by the means for language, and as argued by Appellants in the Appeal Brief. For example, the prior art of record does not disclose the modeler # 16 in figure 1, in the context of the rest of the

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features disclosed in figure 1. Appellants are thanked for pointing out the detailed support for the claimed limitations.

- Claim 33 (page 5, Appeal Brief). The prior art of record does not disclose or suggest the features of the claimed limitations as defined in the specification and as argued by Appellants in the Appeal Brief. For example, the prior art of record does not disclose the modeler # 16 in figure 1, in the context of the rest of the features disclosed in figure 1. Appellants are thanked for pointing out the detailed support for the claimed limitations.

6. The rejections do not meet the conditions as recited by Appellants (page 14, Appeal Brief), namely:

"Anticipation under section 102 can be found only if a single reference shows exactly what is claimed."

And

"Thus, for a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference"

7. Appellants are correct. The prior art of record does not *show exactly what is claimed*. Additionally, every element of the claimed invention is not *identically shown* in a single reference."

8. *Furthermore, the rejections do not meet the conditions as suggested in MPEP section 2132, namely:*

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*"The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an **ipsissimis verbis** test, i.e., identity of terminology is not required. **In re Bond**, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."*

8. *Therefore the art of record doesn't read on the claims and the claims do not read on the art of record*

9. Therefore, claims 1-38 are allowed over the prior art of record.

10. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

11. Any inquiry concerning this communication or earlier communications from the examiner should be:

directed to:

Dr. Hugh Jones telephone number (571) 272-3781, Monday-Thursday

0830 to 0700 ET, **or**

the examiner's supervisor, Jean Homere, telephone number (571) 272-

3780. Any inquiry of a general nature or relating to the status of this

application should be directed to the Group receptionist, telephone

number (703) 305-3900.

mailed to: Commissioner of Patents and Trademarks

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Washington, D.C. 20231

or faxed to: (703) 308-9051 (for formal communications intended for entry)


or

(703) 308-1396 (for informal or draft communications, please label
PROPOSED or *DRAFT*).

Dr. Hugh Jones

Primary Patent Examiner

August 03, 2005


HUGH JONES Ph.D.
PRIMARY PATENT EXAMINER
TECHNOLOGY CENTER 2100